

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 3, 2011

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Waxman:

Thank you for your letter concerning our recent requests for information from the Department of Health and Human Services (HHS). I agree with the point made in your letter - that vigorous oversight of the Executive Branch is necessary to identify waste, fraud, and abuse. We do not believe, however, that oversight of those responsible for drastically changing the health care of every American crosses a line. We believe it is entirely appropriate to demand transparency from the Administration that has promised it will be the most open and transparent in history.

I would note that in the 111th Congress, the Democratic majority refused to hold a single hearing in the Subcommittee on Oversight and Investigations on the effects of the Patient Protection and Affordable Care Act (PPACA) or its implementation. This refusal to conduct even the most basic oversight of the government takeover of the private health care industry was not due to a lack of available subjects. During the months following passage of the bill, the American people were subjected to rising premiums, increased costs, employers that were considering ending their health care coverage, unpopular policies secretly inserted into regulations without public comment, insurers exiting the market altogether, and the need to exempt many businesses from the disastrous effects of the PPACA. Yet this Committee remained silent.

I disagree with your belief that it is disruptive to ask for communications between officials at HHS regarding this important issue. Last year the Democratic majority opted to place HHS in charge of the health care of every single American. If the HHS bureaucracy can handle monitoring every doctor and patient relationship in the United States, it can handle a simple

request for documents from an American public hungering to finally know the details about the Administration's health care takeover.

You state in your letter that HHS has already made public certain information related to the 222 waivers HHS has granted thus far to unions and businesses in order to protect them from the economically devastating effects of the health care reform law. However, it is our understanding that HHS has in fact granted over 700 such waivers. Thus, HHS has apparently granted more than three times as many waivers as you cite in your letter. This fact alone underscores the dire need for oversight of the health care law, its effects, and its implementation by this Administration.

The letters to which you object ask for very basic information regarding the effectiveness of the health care law. The Chief Actuary of the Centers for Medicare and Medicaid Services previously estimated that the Pre-Existing Condition Insurance Plan program (referenced in your letter) would result in approximately 375,000 people gaining coverage in 2010. News reports indicated that at the end of 2010 only 8,000 people had enrolled. Certainly this is a topic that must be discussed, and we certainly hope that the internal discussions at HHS will shed light on why HHS seems to have so badly misjudged the effectiveness of this program. The American people deserve to know this information so that they can come to their own conclusions regarding the effectiveness of the health care law. Finally, it is entirely appropriate to ask HHS how they are spending the substantial amount of money allotted to the Department to implement the PPACA and comparative effectiveness research. The American people deserve to know that their money is being spent properly.

Finally, we note that you yourself have previously sent out document request letters which contain request language which is nearly identical to the language of which you now complain. For ease of reference we have attached one such sample.

Last November the American people made clear that they wanted a House of Representatives that would conduct extensive oversight over this Administration after two years of silence. I intend to follow their instructions.

Sincerely,



Fred Upton
Chairman

Attachment

cc: The Honorable Cliff Stearns, Chairman
Subcommittee on Oversight and Investigations

The Honorable Joseph R. Pitts, Chairman
Subcommittee on Health

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Jr., Ranking Member
Subcommittee on Health

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 226-2327
Minority (202) 226-3841

March 26, 2010

Mr. James W. Owens
Chairman and CEO
Caterpillar Inc.
100 NE Adams Street
Peoria, Illinois 61629

Dear Mr. Owens:

On March 23, 2010, President Obama signed health care reform into law. One of the top priorities of the House Energy and Commerce Committee will be to ensure that the law is implemented effectively and does not have unintended consequences.

After the President signed the health care reform bill into law, your company announced that provisions in the law could adversely affect your ability to provide health insurance. Caterpillar stated in an SEC filing that its after-tax earnings for fiscal year 2010 will decrease by \$100 million as a result of the law. A Caterpillar spokesman also warned of a reduction to employee benefits, claiming "there's greater cost pressures on us that could drive changes to plans."¹

The new law is designed to expand coverage and bring down costs, so your assertions are a matter of concern. They also appear to conflict with independent analyses. The Congressional Budget Office has reported that companies that insure more than 50 employees would see a decrease of up to 3% in average premium costs per person by 2016.² The Business Roundtable, an association of chief executive officers from leading U.S. companies, asserted in November 2009 that health care reform could reduce predicted health insurance cost trends for businesses by more than \$3,000 per employee over the next ten years.³

¹ *Companies say health care costs hard to swallow, Associated Press (March 25, 2010).*

² Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Senator Evan Bayh (Nov. 20, 2009).

³ Business Roundtable, *Health Care Reform: Creating a Sustainable Health Care Marketplace* (November 2009).

Mr. James W. Owens
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The Subcommittee on Oversight and Investigations will hold a hearing on April 21, 2010 at 10:00 a.m. in Room 2123 of the Rayburn House Office Building to examine the impact of the new law on Caterpillar and other large employers. We request your personal testimony at this hearing.


To assist the Committee with its preparation for the hearing, we request that you provide the following documents from January 1, 2009, through the present: (1) any analyses related to the projected impact of health care reform on Caterpillar; and (2) any documents, including e-mail messages, sent to or prepared or reviewed by senior company officials related to the projected impact of health care reform on Caterpillar. We also request an explanation of the accounting methods used by Caterpillar since 2003 to estimate the financial impact on your company of the 28% subsidy for retiree drug coverage and its deductibility or nondeductibility, including the accounting methods used in preparing the cost impact released by Caterpillar this week.

We ask that you provide the requested information by April 9, 2010. For purposes of this request, the term "senior company officials" includes all company officials at the level of Vice President and above for the company or any subsidiary. Attachments to this letter provide additional information about responding to Committee document requests and testifying before the Committee.

If you have any questions regarding this request, please contact Meredith Fuchs with the Committee staff at (202) 226-2424.

Sincerely,


Henry A. Waxman
Chairman


Bart Stupak
Chairman
Subcommittee on Oversight
and Investigations

Attachment

cc: The Honorable Joe Barton
Ranking Member

The Honorable Michael C. Burgess
Ranking Member
Subcommittee on Oversight and
Investigations

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer print outs, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.